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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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23409	7590	04/01/2004		
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			EXAMINER BECKER, DREW E.	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/935,520

Applicant(s)

THORNTON ET AL.

Examiner

Drew E Becker

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ed

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 6, 12, 13, 16-23 and 27-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-11, 14, 15 and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 1-5, 7-11, 14-15, and 24-26 in the response of February 26, 2004 is acknowledged. The traversal is on the ground(s) that there would be no burden to search the other claims. This is not found persuasive because of their different classification and claimed subject matter.

The requirement is still deemed proper and is therefore made FINAL.

### ***Priority***

2. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification (37 CFR 1.78(a)(2) and (a)(5)). Specifically, reference should be made to the provisional application.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-5, 7-11, 14-15, and 24-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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5. Claims 1-5, 7-11, 14-15, and 24-26 recite the rib extending "across" the chamber. However, it is not clear which dimension is considered to be "across", for instance the longitudinally or radially?

6. Claim 9 recites that the rib "extends on<sup>2</sup>half of the radius", while dependent claim 10 recites that the rib extends a distance "equal to the radius". It is not clear how the distance can be both of these lengths.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 5, 7-11, 14, 24, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Lennox III [Pat. No. 5,104,232].

Lennox teaches a vacuum tumbler comprising a cylindrical container with an interior wall and a longitudinal axis of rotation (Figure 1, #11), rib/shelf inserts extending at least one-half of the distance across the chamber (Figure 2, #26 & 36), a drive (Figure 1, #21), and a vacuum source (column 6, line 51).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.


10. Claims 1-5, 7-8, 14-15, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karales [Pat. No. 6,,040,013] in view of Roberts [Pat. No. 3,134,203]. Karales teaches a vacuum tumbler a cylindrical container with an interior wall and a longitudinal axis of rotation (Figure 1, #14), a drive (column 3, line 33), and a vacuum source (column 3, line 34). Karales does not recite a perforated rib/shelf insert extending at whole distance across the chamber and container projections which hold the rib/shelf insert. Roberts teaches a tumbling device comprising a perforated rib/shelf insert extending at whole distance across the chamber (Figure 2, #44) and container projections which hold the rib/shelf insert (Figure 5, #62). It would have been obvious to one of ordinary skill in the art to incorporate the rib/shelf arrangement of Roberts into the invention of Karales since both are directed to tumbling devices, since Karales already included a rotating container (Figure 1, #14), and since the rib/shelf arrangement of Roberts provided lateral loading and unloading, separation of items and fluid, as well as better agitation of the items during tumbling (column 1, lines 9-34).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Drew E Becker  
Primary Examiner  
Art Unit 1761

